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Products North America Inc.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
PG&E CORPORATION
and
PACIFIC GAS AND ELECTRIC COMPANY,
Debtors.

No.: 19-30088 DM

Chapter 11
Lead Case, Jointly Administered

Date: February 27, 2019
Time: 9:30 a.m.
Place: 450 Golden Gate Ave., Ctrm 17

Honorable Hon. Dennis Montali

- ☐ Affects PG&E Corporation
☒ Affects Pacific Gas and Electric
Company
☐ Affects both Debtors

**RESERVATION OF RIGHTS BY BP ENERGY COMPANY AND BP PRODUCTS
NORTH AMERICA INC. TO THE MOTION OF DEBTORS PURSUANT TO
11 U.S.C. §§ 105, 362, 363, AND 364 AND FED. R. BANKR. P. 6003 AND 6004 TO
(A) HONOR PREPETITION OBLIGATIONS TO NATURAL GAS AND ELECTRICITY
EXCHANGE OPERATORS, (B) GRANT ADMINISTRATIVE EXPENSE CLAIMS
AND AUTHORIZE POSTING OF COLLATERAL TO EXCHANGE OPERATORS
TRADING COUNTERPARTIES, AND FUTURE COMMISSION MERCHANTS, (C)
MODIFY THE AUTOMATIC STAY, AND (D) GRANT RELATED RELIEF
[DOCKET NO. 15]**

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3 BP Energy Company (“**BPEC**”) and BP Products North America Inc. (“**BPNA**” and,
4 collectively with BPEC, “**BP**”), by their undersigned attorneys, submit this response to the motion
5 (“**Motion**”) of the Debtors pursuant to 11 U.S.C. §§ 105, 362, 363, and 364 and Fed. R. Bankr. P.
6 6003 and 6004 to (a) honor prepetition obligations to natural gas and electricity exchange operators,
7 (b) grant administrative expense claims and authorize posting of collateral to exchange operators
8 trading counterparties, and future commission merchants, (c) modify the automatic stay, and (d)
9 grant related relief [ECF No. 15] and respectfully represents as follows:
10

11 1. BPEC and BPNA are each counterparties to commodities supply contracts
12 (“**Contracts**”) with Pacific Gas & Electric Company (the “**Utility**”) that are subject to the
13 Bankruptcy Code’s safe harbor provisions for financial-markets contracts.¹ Pursuant to the safe
14 harbor provisions of the Bankruptcy Code, BP may terminate the Contracts terminate the transaction
15 based on the Utility’s bankruptcy petition, insolvency, or financial condition and offset and net out
16 the parties’ obligations (including enforcement against collateral held by BP) free of the restraints of
17 the automatic stay.
18

19 2. On the Petition Date, the Utility filed the Motion, *inter alia*, to permit Trading
20 Counterparties (as defined therein) to apply existing cash collateral to their prepetition obligations
21 and authorize the Utility to provide cash collateral for post-petition obligations to Trading
22 Counterparties.

23 3. BPEC and BPNA believe that they are each intended to be Trading Counterparties
24 within the definition of the Motion. However, the language used in the Motion is not clear and BP is
25
26

27 ¹ BPEC is counterparty to a contract for the Sale and Purchase of Natural Gas pursuant to which it supplies
28 natural gas to the Utility. BPNA is counterparty to a Master Allowance/Offset Credit Purchase Agreement pursuant to
which it sells carbon offset credits to the Utility.

1 unsure whether any order that may be entered if the Motion is granted will provide BP with
2 protections it will need to continue to deliver commodities to the Utility during the Chapter 11 case.

3 4. BP has raised its concerns with counsel for the Debtors and is hopeful that the
4 language of any proposed final order might provide BP with the assurances it needs to continue to
5 make deliveries to the Utility. Since the Debtor has not yet proposed a form of final order, BP
6 reserves its right to object to the form and present its concerns to the Court at the hearing on the
7 Motion.
8

9 5. Neither this reservation of rights nor any subsequent appearance, pleading, proof of
10 claim or suit is intended or shall be deemed or construed as a waiver of any or all rights, claims,
11 actions, defenses, and recoupments to which BPEC and BNPA are or may be entitled to under any
12 agreements with the Utility, in law or in equity, all of which rights, claims actions, defenses, setoffs
13 and recoupments are expressly reserved hereby.
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15 Dated: February 21, 2019
16

17
18 DATED: February 21, 2019

19 REED SMITH LLP
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21 By: /s/ Jonathan R. Doolittle
22 Jonathan R. Doolittle
23 Attorneys for BP Energy Company and
24 BP Products North America Inc.
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